

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 5, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Bill Eggers (D)
Rep. Gail Gutsche (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: Rep. Aubyn A. Curtiss (R)
Rep. Steven Gallus (D)
Rep. Christopher Harris (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 29, 1/03/01**
HB 52, 1/03/01
HB 64, 1/03/01

HB 68, 1/03/01

HB 76, 1/03/01

HB 77, 1/03/01

Executive Action: HB 52 19-1

HEARING ON HB 52

Sponsor: Rep. Dave Gallik, HD 52 said this is a Bill that has been selected by General Mosley and Major Moran of the National Guard. This is a Bill presented every year to make sure that our laws are in compliance with and in keeping with the most recent version of the federal military laws and regulations that apply to the National Guard in this state. The Supreme Court, Lee v. Montana, a 1981 case, indicated that the legislature has the right to adopt existing federal laws and regulations of state laws but does not have the right to adopt changes in the federal laws and regulations that occur some time in the future.

Proponents: Major Jim Moran, Full-time Staff Judge Advocate, Attorney, Montana National Guard. EXHIBIT(juh03a01)

Roger A. Hagan, Montana National Guard Association.
EXHIBIT(juh03a02)

Opponents: None

Questions from Committee Members and Responses: None

Rep. Noennig said, assuming there is no substantive change as a result of this adoption of the change in the federal regulations, that is an issue he would like to know about.

Closing by Sponsor: Rep. Gallik closed the Hearing on HB 52.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 14.2}

HEARING ON HB 29

Sponsor: Rep. Mark Noennig, HD 9 said HB 29 is a Bill that deals with the residential tenants' security deposits in the Landlord Tenants Act. Rep. Noennig explained EXHIBIT(juh03a03).

Proponents: Ronda Carpenter, Montana Housing Providers.

{Tape : 1; Side : A; Approx. Time Counter : 14.2 - 21.9}

Opponents: Ronny Roach, Income Property Managers, Great Falls,

said he believes HB29 is not redundant but helpful to insure and clarify a landlord's responsibility and asked the committee to not repeal the law.

Arnold Schlagel, Landlord, asked the committee to not repeal the section.

Briana Verstein, Montana Peoples' Action.

{Tape : 1; Side : A; Approx. Time Counter : 21.9 - 26.6}

Questions from Committee Members and Responses:

Rep. Peterson asked if a tenant leaves and gives no forwarding address, what should be done with the security deposit? **Mr. Schlagel** said the money would be held until the tenant notifies where it can be sent. **Rep. Peterson** asked how long could the landlord keep the money and **Mr. Schlagel** said whatever the statute of limitation requires them to.

Rep. Harris asked **Ms. Verstein's** if she agreed that 70-25-205 actually clarifies and is worth retaining. **Ms. Verstein** said yes.

Rep. Mangan referred a question to **Ronda Carpenter, Montana Housing Providers** and she deferred the question to the sponsor.

{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 1.9}

Rep. Noennig said if there is a rental agreement the statute of limitations for claims based on any written agreement figures then the statute under the landlord tenant act would provide one for you.

Closing by Sponsor: **Rep. Noennig** closed the Hearing on HB 29

At this point **Rep. Paul Clark** chaired the meeting.

HEARING ON HB 68

Sponsor: **Rep. William Price, HD 94** said this is an Act allowing criminal sentences to include a provision of suspension of license for driving privileges for a convicted person upon failure to comply with sentence.

Proponents: **Robert Throssell, Montana Magistrates' Association**, said this is another tool for the judges to put into sentencing law. It is not mandatory, just discretionary.

Jim Smith, Montana Sheriff and Peace Officers' Association, agreed with the Montana Magistrates' Association testimony.

Opponents: **Scott Crichton, Executive Director, ACLU,** said he agrees with the discussion as has been presented, but if a driver's license is taken away, it would be difficult to get a driver's license back for a prisoner getting out who wants to be productive and get into the work force again. This could make it more difficult for him to get on the road to recovery.

{Tape : 1; Side : B; Approx. Time Counter : 1.9 - 14.3}

Informational Witnesses: **Brenda Nordlund, Assistant Attorney General, Motor Vehicle Division, Department of Justice** said there is a significant fiscal note that she is bringing to the attention of the committee.

Questions from Committee Members and Responses: **Rep. Eggers** asked **Ms. Nordlund** if there was an ancillary cost in addition to the FTEs. **Ms. Nordlund** said yes and it shows up as operating expenses in the fiscal note.

{Tape : 1; Side : B; Approx. Time Counter : 14.3 - 23.5}

Rep. Noennig asked **Ms. Nordlund** for an explanation of what the technical problem is. She read from section I of 214, A, B and C are requirements to be met before they can send a driver's license. There needs to be a parallel amendment in subsection II following the language "either appear in court or pay the fine, cost of restitution or payment for supervision"

Reps. Shockley, Harris, Wolery asked for clarification from **Ms. Nordlund** and **Mr. Throssell**.

{Tape : 1; Side : B; Approx. Time Counter : 23.5 - 29.5}

{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 0.3}

Rep. Shockley asked **Ms. Nordlund** does the Department understands that this Bill will only suspend the license if the person doesn't comply with the rest of the sentence? **Ms. Nordlund** said yes. **Rep. Shockley** said, in knowing that, she decided it would double the number of suspensions? **Ms. Nordlund** said yes, based on past experience.

Sponsor Closed: **Rep. Price** closed the Hearing on HB 68

HEARING ON HB 76 and HB 77

Sponsor: Rep. Jeff Mangan, HD 45 explained HB 76, an increase sentence for gang related crime on public housing property and HB 77 an increase penalty for sale of drugs near public housing.

Proponents: Jerry Williams, Public Housing Authority, Butte said drug dealing on public housing property is a problem because there are numerous children there as there is a playground in the center of the property. Children are susceptible to these people who are dealing drugs. This enhancement is something he could use because it would be advertised, put notice out to all residents, and if they are convicted of criminal distribution of dangerous drugs on the property, they will be spending a minimum of three years in prison.

Opponents: Beth Brenneman, Director, ACLU **EXHIBIT**(juh03a04)
EXHIBIT(juh03a05)

Daniel Fox, Helena **EXHIBIT**(juh03a06)

Questions from Committee Members and Responses: Reps. Laszlauffy, Newman, Hurdle, Adams, Harris, Clark, Clancy, Noennig, Gutsche, Peterson referred to Mr. Williams, Beth Brenneman and Rep. Mangan, Sponsor for clarification and defining sections of the Bill.

{Tape : 2; Side : B; Approx. Time Counter : 0.3 - 14}

Closing by Sponsor: Rep. Mangan closed the Hearing on HB 76 and HB 77.

{Tape : 2; Side : B; Approx. Time Counter : 14 - 29}

{Tape : 3; Side : A; Approx. Time Counter : 0.1 - 10.8}

HEARING ON HB 64

Sponsor: Rep. Ken Peterson, HD 20 said he was asked by the Department of Revenue to sponsor this Bill to exempt employees of the Department of Revenue from the criminal trespass law when entering private land for the purpose of obtaining permission to appraise or audit real and personal property for property tax purposes. Since then there has been a lot of discussion and concerns of people. Through all these discussions it is evident the Department of Revenue has a job to do. They need to be able to do it without substantial interference. Balanced against that are the rights of citizens and private property. The concerns of the Department is that the criminal trespass statutes, in a very

limited sense, do not apply to this. The essence of the Bill is they be allowed on property that is posted or concerned if the property is not accessible.

Proponents: Kurt Alme, Director, Department of Revenue said of all the legislation the Department of Revenue is proposing to this legislature, this is the most important and is most critical to the Department. Right now the Department begins a two-year appraisal cycle which is the most ambitious the Department has undertaken.

One issue is, what happens if there are property owners who absolutely will not let the Department on the property? How do they handle consent as they certainly want to respect the private property rights? This is a project the Department wants to get done fairly. The Department is asking for a stay of the right to appeal until they are let on the property.

Greg Thornquist, Chairman, State Tax Appeal Board, has discussed the Bill with the Department of Revenue representatives and he did have some concerns with the current language and worked with the Department to draft some language that would be acceptable.

Mary Whittinghill, Montana Taxpayers' Association

Opponents: Steve Hicks, White Sulphur Springs

Dwight Krohne, Livingston, **EXHIBIT**(juh03a07) **EXHIBIT**(juh03a08)

{Tape : 3; Side : A; Approx. Time Counter : 10.8 - 30}

{Tape : 3; Side : B; Approx. Time Counter : 0.1 - 12.7}

Questions from Committee Members and Responses: Rep. Eggers has some concerns and **Mr. Alme** has addressed a number of those. The amendments suggested are substantive and critical. He suggests the committee postpone this until the amendments are available or consider tabling. **Chairman Shockley** said there are people who have come a long distance for this and he feels it would be unfair not to let them testify.

Chairman Shockley told the visitors that during executive action they can watch but can't participate but he is proposing to the Committee, if nobody objects, more testimony will be taken if necessary.

Closing by Sponsor: Rep. Peterson closed the Hearing on HB 64

EXECUTIVE ACTION ON HB 29

Motion: REP. NOENNIG moved that HB 29 DO PASS.

Discussion: Rep. Noennig reiterated this is just a housekeeping Bill and he agrees with the opponents about what they want to do but thinks it's really an argument with the language of the Bill and by that, he means the language in the statute.

Rep. Wolery referred to the opponents' testimony and asked for clarification. Rep. Noennig said the problem comes with no specific definition of what "wrongfully withhold" means. It could be re-worded.

Rep. Harris shared the same concerns of Rep. Wolery.

Rep. Eggers said the scenario he is seeing is, if the burden should be on the landlord to attempt to reimburse the tenant, the way he does that is to have a forwarding address or mail a letter to the last known address, which may be the address that was just vacated, keeps a copy of that letter in a file to show the court he made a good faith attempt to return the money. The tenant, not receiving the money, goes to court and sues and the landlord produces the letter that shows he attempted to reimburse the tenant, but could not because he had no forwarding address, or mail was not forwarded by the post office from the last known address to a new one so he feels Rep. Noennig is on the right track.

{Tape : 3; Side : B; Approx. Time Counter : 12.7 - 17.9}

Rep. Gutsche asked if the Bill says anything about the failure of the tenant to provide an address? Rep. Noennig said the reason the Bill does not say that is, if you kept that provision in, "failure to provide address" relieves the landlord of the liability imposed by 204. If you stop there that is to the benefit of the landlord and does not believe the tenants are in favor of that.

Reps. Holden, Harris, Clark asked Rep. Noennig for further clarification.

Motion/Vote: Rep. Noennig moved a substitute motion to postpone action on HB 29 #2. Motion carried unanimously.

{Tape : 3; Side : B; Approx. Time Counter : 17.9 - 29.2}

Rep. Paul Clark chaired the meeting at this point.

EXECUTIVE ACTION ON HB 52

Motion/Vote: REP. SHOCKLEY moved that HB 52 DO PASS. #3 Motion
carried 19-1 with Rep. Curtiss voting no.

ADJOURNMENT

Adjournment: 11:15 A.M.

REP. JIM SHOCKLEY, Chairman

MARY LOU SCHMITZ, Secretary

JS/MS

EXHIBIT (juh03aad)